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FRANCIS A. SAMPSON.

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## MISSOURI HISTORICAL REVIEW.

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#### A SKETCH OF MISSOURI CONSTITUTIONAL HIS-TORY DURING THE TERRITORIAL PERIOD.

In the history of an American commonwealth there appear relatively few dates that chronicle events of commanding importance. Ranking first in the history of Missouri and one of the foremost in that of the United States is April 30, 1803. On that date was concluded the treaty between this nation and France for the cession of Louisiana. The ratification of this treaty was advised by the United States Senate and was made by President Jefferson on October 21, 1803; and on the same day ratifications were exchanged and a proclamation was issued to that effect. (1) By this treaty the United States came into the absolute possession of the largest and most valuable extent of territory that was ever obtained purely through purchase by any nation since the dawn of history. Prior to 1762 France had held legal title to Louisiana, but since the settlements made in that part now included in the State of Missouri had been few, the French law need not receive consideration here. From 1762 to 1800 Spain held legal title to Louisiana. By the treaty of San Ildefonso, October 1, 1800, Louisiana was retroceded by Spain to France, but Spain remained in actual possession almost up to the time of transfer to the United States in 1803. During a period of thirty-four years the Spanish law of Upper Louisiana governed the people within the present

<sup>(1)</sup> Treaties & Conventions, I. 508-11; Mo. Ter. Laws, I. 1-4.

limits of Missouri. (2) Nor were these laws of less binding character after the cession of 1803, except as they were expressly annulled, superseded, or amended. (3) However, for our purposes, the provisions of the Spanish laws of Upper Louisiana may be disregarded. The English system of jurisprudence gradually superseded that of the Continent in Upper Louisiana, and today the organic law of Missouri rests entirely on an Anglo-American basis beginning with the Act of Congress of October 31, 1803.

It is important to notice in this connection one of the

(2) Houck, *Hist. Mo.*, I. 287, 298. The secret treaty of Fontainbleau, December 3, 1762, ceded the territory west of the Mississippi to Spain. France officially advised the director-general of Louisiana of this fact in a letter dated April 21, 1764. On the 18th of August, 1769, Spain took possession of Louisiana, and on May 20, 1770, Upper Louisiana was formally surrendered to Spain.

(3) "The return of Louisiana under the dominion of France, and its transfer to the United States, did not, for a moment weaken the Spanish laws in the province. The French, ———, made no alteration in the jurisprudence of the country." "According to the laws of nations, and the treaty between the United States and France, of April 30, 1803, and the acts of Congress of March 26, 1804, March 3, 1805 and June 4, 1812, the Spanish laws in Upper Louisiana were expressly continued in full force, until altered or repealed by the proper legislative authority."

"There was no legislation on this subject, until the 19th of January, 1816, when the territorial legislature of Missouri declared that the common law of England, and the statutes of the British Parliament, made prior to the fourth year of James the First, to supply its defects, should be the rule of decision, so far as the same was not repugnant to, or inconsistent with, the laws (omitting to say statute laws) of the territory." Casselberry, The First Laws of the Mississippi Valley. (The Western Journal, I. 191.)

"The Supreme Court of Missouri [Cf. 4 Mo. Reports, p. 380, and 10 Mo. Reports, p. 199] seems to have decided, that the act of the territorial legislature of the 19th of January, 1816, did not abolish the Spanish laws, but only introduced the common law, so far as was necessary to supply the deficiencies of the Spanish law, and the Missouri District Court of the United States, in the case of Smith vs. Fitzsimmons and Rogers, made a similar decision."

"And as there was no more legislation on this subject, until the act of the legislature of February the 12th, 1825, which went into operation on the 4th of July following, we may safely come to the conclusion, that the main body of the Spanish law continued in full force, until the 4th of July, 1825, when the revised statutes of that year went into operation, which made the English common law the rule of decision, except so far as the same was inconsistent with the statuts laws of the State." Ibid., p. 192.

By act of the Missouri Territorial Legislature, January 19, 1816, the common law of England and acts of the English Parliament made prior to the 4th year of James I., which were both of a general nature, and which were not contrary to United States Constitution or Missouri Territorial enactment, were made "The rule of decision" in Missouri until altered by the Leg-

islature. Mo. Ter. Laws, p. 436.

articles of the treaty of cession of 1803. Article III states thus: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess." At the time of Missouri's struggle for admission in 1819 and 1820, it appears from the articles in the territorial newspapers that practically every well-informed Missourian had learned this article by rote and especially that part which guaranteed to them protection "in the free enjoyment of their liberty, property, and the religion," etc. Slaves formed part of the "property" of the people of Upper Louisiana prior to 1803, and also after that time, and Congressional dictation on this subject only served to recall the third article of the treaty of 1803.

Although as far as this work on Missouri is concerned there is no need to study the laws in force here under French and Spanish dominion, it is important to note that under Spanish rule, the Province of Louisiana was divided into a lower and an upper district for the purpose of facilitating governmental administration. There were several reasons for this division, the more important being the great distance separating the two centers of settlement near the mouth of the Mississippi and that of the Missouri. (4) Also, the pop-

Cf. also Houck, Hist. Mo., II. 4.

Paul Alliot in his Historical and Political Reflections on Louisiana, written

about 1803, makes the following remark on this point:-

taking their merchandise up the river."

(Robertson, Louisiana, 1785-1807, I. 139, 141.)

<sup>(4)</sup> Nicollet in his History of St. Louis, page 92, states that in 1763, Laclede, the founder of St. Louis, took three months to come from New Orleans to Ste. Genevieve with his flotilla, a distance of 1,286 miles.

It took about three months to ascend the Mississippi at that time as is also evidenced in the Report of Don Pedro Piernas to Gov. O'Reilly dated Oct. 31, 1769, (Houck, Spanish Regime in Mo., I. 66-75.) and in a letter of Fernando De Leyba dated July 11, 1778. (Ibid., pp. 1631.)

<sup>&</sup>quot;Although it is reckoned as five hundred leagues from St. Louis to New Orleans, yet with the river high, it only takes twenty days to reach the latter place."

He further adds that the merchants "generally take three months in

ulation around New Orleans, which was the seat of government of Lower Louisiana, was greater and represented a higher stage of development than we find in Upper Louisiana. The governor-general at New Orleans exercised direct jurisdiction over Lower Louisiana and appellate jurisdiction over the upper district; and a lieutenant-governor at St. Louis exercised direct jurisdiction over Upper Louisiana. (5)

At the time of the cession the population of Upper Louisiana was over ten thousand, (6) of which over one-half were Americans. (7) Not only did Spanish law give place to English law, but even Spanish and French influence as represented by the population had already greatly diminished and was soon to become a negligible quantity as far as legislation was concerned. Excepting some of the large Spanish land grantees and a part of the American settlers, especially those around Cape Girardeau and Mine à Breton, the inhabitants of Upper Louisiana neither rejoiced nor were they even reconciled either at the time when the treaty of cession became known or later when the actual transfer was made. (8)

<sup>(5)</sup> Stoddard, Sketches of Louisiana, chap. VIII. Loeb, Beginning of Mo. Leg., in Mo. Hist. R., I. 53f.

<sup>(6)</sup> Stoddard, op. cit., p. 226, gives the population in 1804 as 10,340,—9,020 whites and 1,320 slaves.

<sup>(7)</sup> Ibid., p. 225, states that three-fifths of the population were "English Americans."

Perkins and Peck, Annals of the West, pp. 543f., gives the total population of Upper Louisiana in 1804 as 10,120 and divides it as follows: French and Spanish, 3,760; Anglo-Americans, 5,090; Blacks, 1,270.

Rufus Easton, later Territorial Delegate to Congress from Missouri, in a letter dated at St. Louis, January 17, 1805, to President Jefferson, states that in 1801 the census taken of the inhabitants of Upper Louisiana showed a population of 10,301; and that according to the best informed persons in the district the population at the close of 1804 had risen to over 12,000. Of this latter number he thought that two-fifths were French and the others mostly immigrants from the United States. (Copy of this letter in State Hist. Soc. of Missouri: original in MSS. Dis., Library of Cong., Jefferson Papers, 2d Series, vol. 32.)

<sup>(8) &</sup>quot;On the 9th day of July, 1803, at seven o'clock p. m.—and the precision with which this date is registered indicates the profound sensation with which the news was received—the inhabitants of St. Louis learned, indirectly at first, that Spain had retroceded Louisiana to Napoleon, and that the latter had sold it to the United States." Nicollet, p. 89.

<sup>&</sup>quot;It is easier to imagine than to describe the astonishment and wonder of the good colonists, when, as a sequel of the sundry official acts by which they were declared republicans, and their country a member of the great American

As an historical illustration of how circumstances may alter cases might be noted here the cold reception extended to the United States by these early Missourians of 1804 when they first learned of their newly made connection with the Fed-

confederation founded by Washington, they witnessed the arrival of a legion of judges, lawyers, notaries, collector of taxes, etc., etc., and, above all, a flock of vampires in the shape of land speculators. Liberty, with the popular institutions that accompany her, was welcomed; their advantages were soon understood; etc." Ibid., pp. 90f. This last statement by Nicollet is not entirely true. American institutions were not welcomed, especially by the better class of Frenchmen, and however quickly they were understood, their advantages were late in being appreciated. See below the account of the French convention of delegates in September, 1804.

Mr. Primm says:-

"When the transfer was completely effected—when in the presence of the assembled population, the flag of the United States had replaced that of Spain—the tears and lamentations of the ancient inhabitants, proved how much they dreaded the change which the treaty of cession had brought about."

Perkins and Peck, op. cit., p. 537.

Mr. Houck does not take the same position on this point. He says: "Without the least objection on the part of the French population of Upper Louisiana, and to the great satisfaction of the American settlers, the jurisdiction of the United States was thus extended over the new territory." (Houck, Hist. Mo., II. 373.) Speaking of the sentiment in Cape Girardeau he adds: "At Cape Girardeau the people, who were all Americans, with the exception of Lorimier and Cousin, were pleased greatly with the transfer of the country and seemed to have been decidedly hostile, if not to the Spanish Government, to the Spanish officers." (Ibid., p. 364.) However, regarding New Madrid he makes the following statement: "But the people of New Madrid were not pleased with the change of government and he li. e. Don Juan La Vallee, who surrendered the New Madrid fort to Captain Bissell] writes that 'this change has caused the greatest anger among these habitans, who live here, and especially on the day of surrender, during the ceremonies of which they have expressed the greatest grief.' 4" (Ibid., p. 363. The footnote No. 4 gives the authority for the foregoing as follows: "General Archives of the Indies, Seville-Report of La Vallee to the Marquis de Casa Calvo and Don Manuel de Salcedo-dated March 29, 1804.")

Even as regards the inhabitants of Cape Girardeau, Major T. W. Waters, a resident of that town, wrote in a letter dated August 23, 1804, to President Jefferson as follows: "I will observe one thing to you, Sir, that many here do not like the change and every law that is passed that puts them in a worse situation than they would have been under the Spaniards is criticised and the worst construction put on, and those that are fond of the change feel disappointed at the law that Congress has passed for the government of this country." (Ibid., pp. 385f.) It is, however, quite probable that Major Waters referred purely to the change in sentiment after the cession was made and after the law of Congress of March 26, 1804, became known.

Regarding the holders of large Spanish land grants and incidentally of the sentiment in St. Louis at the time of the cession, Mr. Houck says: "A few French land speculators, who....., had secured large and important concessions of land, no doubt anticipated to reap great benefits. They well understood that iand values would greatly increase, because free donations of land to actual settlers would no longer be made. Under the new govern-

eral Union of States, and on the other hand, how impassioned they were fifteen years later in their arguments for admission into that very Union. We believe that the reasons for their first attitude were: their attachment to the Spanish

ment these holders of concessions and their assignees at once became and were regarded as the landed capitalists of the new territory. Such being the case, it is very probable that one of the chief beneficiaries of the favors of the late Spanish authorities became very enthusiastic and called for 'three cheers in honor of his adopted country,' as has been stated. Nevertheless, it is said that Charles Gratiot was about the only man in St. Louis who took a personal interest in the transfer of the country to the United States; that the people as a whole were indifferent. But Gratiot had received large land grants and perhaps understood better than anyone in St. Louis at that time the immense benefit a change of government implied." (Ibid., pp. 373f.)
Mr. Houck further says: "The general apathy of the French inhabitants at the time lead [led] many to think that the inhabitants were not fit for self-government." (Ibid., p. 375.)

Major Amos Stoddard, who certainly was most competent to judge of the sentiment in Upper Louisiana at the time of the cession, wrote as follows: "Indeed, few of the French, and part of the English Americans only, were at first reconciled to the change, though they never manifested any discontent. The former did not doubt the justice of the United States; but they seemed to feel as if they had been sold in open market, and by this means degraded; the treaty of 1762, and the change under it in 1769, rushed on their minds, and awakened all their apprehensions. The latter anticipated taxation, many of whom had abandoned their native country to avoid it, and voluntarily became the subjects of a government, careful not to impose any burthens on the agricultural part of the community." (Stoddard, op. cii., p. 311. For an account of some of the actual benefits that did accrue then and later to Upper Louisiana under American rule, cf. ibid., pp. 253f., 266: and Brackenridge, Views of Louisiana, pp. 140, 143-145.) (Italics mine.)

An equally reliable authority on this point is Rufus Easton, who on January 17, 1805, wrote the following from St. Louis: "That they, the French inhabitants, are in general enemies to the change of Government requires no argument to demonstrate—it depends on fact. When it was rumoured thro' [sic] this Country last summer that a recession to Spain would take place, joy giadden in their hearts—This however must not be taken for a universal sentiment—It is only that of the few who have feasted upon the labors of the more ignorant and industrious and whom they prejudice and influence as they please. Many have sufficient discernment to perceive that the cession to the United States advanced their landed property at least two hundred per centum they thank the stars and are willing to give the praise to whom it is due." (Letter to Pres. Jefferson. Copy in State Hist. Soc. of Mo. Original in MSS. Div., Library of Congress, Jefferson Papers, 2d Series, vol. 325.

Darby, although not a contemporary authority, was well acquainted with many who witnessed the transfer of Upper Louisiana in 1804. The following quotation is from his work: "It was Charles Gratiot who requested the inhabitants, in their native tongue, when the ceremony took place, to cheer the American flag, when it was for the first time run up and floated to the breeze on the western bank of the Mississippi. The cheers of the crowd were faint and few, as many, very many of the people shed bitter tears of regret at being transferred, without previous knowledge, from the sovereignty of a government and language to which they had been accustomed and fondly

regime with its practical freedom from taxes and military services, with its swift and generally true justice, its liberal land policy, and its uniform respect for French institutions, customs and language; and their dislike of American laws and institutions, combined with the fear of some attack on slavery, such as the Northwest Ordinance of 1787. (9) Moreover, the French inhabitants felt insecure of their religion under the new Republic. (10) Years later when they perceived the benefits that would flow from statehood and when

attached, and under which they had been bred, to that of a strange government, with whose manners, habits, language, and laws they were not familiar. There existed, moreover, in the minds of many of the French inhabitants a deep-rooted prejudice against the Americans, notwithstanding the encouraging and conciliating speech made by their countryman and friend, Charles Gratiot, who was favorable to, and sustained and approved the transfer of the country." . . "Mr. Jefferson, from his long residence in Paris, understood the French character well, was much attached to the French people, and was aware that the inhabitants of Louisiana disliked and were greatly opposed to the American government." (Recollections, pp. 223f.)

Scharff quotes Billon as follows regarding the sentiment in St. Louis in 1804: "On that day [March 9, 1804] the inhabitants witnessed a scene which, to much the largest portion of them, was fraught with sadness and apprehension. These people had been so long contented and happy under the mild sway of all their Spanish commandants, with one exception alone (De Leyba), that it was not surprising they should have entertained those feelings at being transferred, themselves and homes, to a nation whose people were mainly descended from the English, a nation that for generations back they had looked upon as the natural and hereditary enemy of the land from whence they sprung. For it must be borne in mind that they were nearly all of French origin, and although under Spanish dominion, there were but few Spaniards in the country, outside of the officials and soldiery." (Hist. St. Louis, I. 259.)

(9) It is here worthy of note that on January 23, 1804, there was communicated to the United States Senate a "Memorial of the American Convention for Promoting the Abolition of Slavery" praying Congress to prohibit by law the importation of slaves into the "Territory of Louisiana, lately ceded to the United States." This memorial actually suggested an enactment on this subject similar to the one in the Northwest Ordinance. Am. State Papers, Misc., I. 386. The chaotic condition of society which had prevailed in the Illinois country after American occupation would also hardly have served to endear the United States in the minds of many of both the French and American settlers who had immigrated to Upper Louisiana from their former homes on the east bank of the Mississippi during the latter eighties and the nineties of the 18th century. Cf. also Kaskaskia Records 1778-1790, in Ill. Hist. Collections, V; especially letter of John Rice Jones, later Justice of Missouri Supreme Court, dated Oct. 29, 1789, at Kaskaskia to Major Hemtramck. (Ibid., pp. 514-517.) The inhabitants of Upper Louisiana, especially the older ones, also undoubtedly resented the manner of cession which appeared to them like a sale in the open market.

(10) Alback's Annals of the West, p. 777.

the flood of American immigration poured in, they naturally desired admission into the Union.

The first organic law of American origin that applied to Louisiana was passed at the first session of the Eighth Congress of the United States on October 31, 1803, and provided a temporary government for the new district. This act empowered the President of the United States to take possession of Louisiana and placed under his direction all military, civil and judicial powers that had been exercised by the officials of the existing government. This great power was lodged in his hands until Congress made other regulations. (11) Strange though it seems to us now, this law was not unfavorably received by the French inhabitants of Louisiana. And the reason for this attitute was not because they excused and appreciated it as a temporary makeshift government and therefore as a necessary, initiatory step towards later self-government, but rather because of their natural inclination for a military regime, due to years of training under just such a centralized government. The belief that this act was unpopular in Upper Louisiana is unfounded in fact. In the eyes of the French better classes it must have seemed at the time the ideal type of government for this territory. It was in the following year, after Congress had passed an act annexing Upper Louisiana to Indiana Territory, that these well-to-do Frenchmen petitioned Congress and through their representative, Chouteau, pleaded with President Jefferson for just this kind of government.

Under this law Captain Amos Stoddard was appointed the first American civil commandant of Upper Louisiana. The seat of government remained at St. Louis, and little change in governmental administration was introduced. This was in accordance with the policy of the Washington officials, who wisely tried to pacify the fears of the inhabitants. (12)

<sup>(11)</sup> Stat. at Large, II. 245; Treaties & Conventions, I. 508ff.

<sup>(12)</sup> Captain Stoddard had instructions that "inasmuch as the largest portion of the old inhabitants were strenuously opposed to the change of government, it would go far to conciliate them, and they would much sooner become reconciled to the new order of things, by making little; if any change in the modus operandi of the government, at least for a time." Billon, Annals of St. Louis, 1764-1804, p. 364.

Congress did not wait long, however, in making provision for the government of Louisiana. By an act of March 26, 1804, Louisiana was divided into two districts or territories. All south of the thirty-third degree of north latitude was to be called the "territory of Orleans"; and all north, the "district of Louisiana"; the line of demarcation being the present southern boundary of Arkansas. The District of Louisiana was placed under the government of Indiana Territory, which then consisted of a Governor, Secretary, and three Judges. The Governor and Judges exercised full judicial, legislative and executive power under certain general restrictions. They were specifically given power to establish inferior courts and prescribe their duties; make laws, etc., except those abridging religious freedom or those contrary to the laws of the United States; and it was also set forth that criminal trials were to be by a jury of twelve and civil trials involving amounts over \$100 also to be by jury. The Judges were to hold two annual courts in the district. It was provided, among other things, that the laws in force in the District of Louisiana which were not inconsistent with this act were to remain in force until altered. This act went into effect October 1, 1804, (13) and excepting the attempted legislation bearing on the "Missouri Question" Congress never passed an act which applied solely to Missouri that was more de-

(13) Stat. at Large, II. 283-289; Mo. Ter. Laws, pp. 5f.

A large part of this act also dealt with the government of the Territory of Orleans. The inhabitants of Lower Louisiana included in the new "Territory of Orleans" were equally incensed by this act. They drafted a memorial protesting against the division of Louisiana into two parts and the lack of self-government. This act gave the "Territory of Orleans" a territorial government of the first or lowest grade. This petition is said to have been signed by over two thousand heads of families of Louisiana. It was entitled a "Remonstrance Of The People Of Louisiana Against The Political System Adopted By Congress For Them", and was communicated to the Senate December 31, 1804. Am. State Papers, Misc., I. 396ff.

This petition was placed in the hands of a committee appointed by the House of Representatives. On January 25, 1805, the committee closed its reports with a resolution "that provision ought to be made by law for extending to the inhabitants of Louisiana the right of self-government." This resolution was passed by the House on January 28, 1805. Annals of Congress,

pp. 1014-21.

To this same committee was also referred the petition of the inhabitants of the "District of Louisiana", which will next be discussed. *Ibid.*, p. 957.

tested by at least one-half of her population than was this one. It is hardly necessary for us to enter into a discussion of the laws governing the District of Louisiana passed by the Governors and Judges of Indiana Territory. There were sixteen acts passed all together; however, their bearing on our study is unimportant. (14) It should be stated that these laws were well suited to a pioneer community like Missouri, and no criticism of them is found in any of the literature of that day.

From the very beginning of Missouri's connection with the United States there has never existed the least timidity on the part of the people of this State to make known to the nation in a perfectly constitutional way their wants and grievances. The legislation of Congress in 1804 for the inhabitants of the District of Louisiana was received with the greatest disfavor west of the Mississippi, and occasioned the first of a long series of petitions and remonstrances presented to Congress by the inhabitants of the present State of Missouri. These early petitions are characterized by temperate language and a tone of positiveness based on a just cause. Although at the time of the cession there was no considerable open dissatisfaction or opposition, in less than six months after that the discontent was widespread. The people of Upper Louisiana did not like the American regime with its numerous officials, tax gatherers and jury system. They regarded with equal disfavor the method provided for settling the Spanish land grants; (15) the increased expenses under the American regime, e. g., taxes, road and military service without compensation; the absence of all representative government; and the act of March 26, 1804, in whole. As early as August 23, 1804, Major T. W. Waters of Cape Girardeau, a staunch American and a man of influence, wrote President Jefferson that a petition had been "drawn up" protesting against parts of that act of Congress. (16) On September 29, 1804, two days before the act of Congress of March 26,

<sup>(14)</sup> Cf. also Loeb, op. cit., I. 59-71.

<sup>(15)</sup> Stoddard, op. cit., p. 253.

<sup>(16)</sup> Houck, Hist. Mo., II. 385, 387f.

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1804, was to take effect, a "remonstrance and petition of the representatives elected by the freemen of the districts in the District of Louisiana to Congress" was drawn up and signed in St. Louis by sixteen deputies from the five subdivisions now included in the State of Missouri. (17) The sixteen delegates were apportioned as follows: two from each of the districts of New Madrid, Cape Girardeau, and Ste. Genevieve; six from St. Louis and "dependencies"; and four from St. Charles and "dependencies". The dissatisfaction with the law of March 26, 1804, was based on the grievances that it annexed upper Louisiana to Indiana Territory; that it contained no provisions granting self-government; that it did not protect and secure slavery west of the Mississippi River; that it proposed settling the eastern Indians on Louisiana soil; and that section fourteen of that act, the section relating to the Spanish land grants, was unjust and unreasonable. This last grievance was beyond question the most real and deeply seated of all. One prominent contemporary of that day even goes so far as to state that the annexation of upper Louisiana to Indiana Territory was only an ostensible objection to the law of 1804, and that the real ground for dissatisfaction was the land title clause. (17a)

This interesting petition remonstrates at some length against the division of the Louisiana Purchase into two parts and states that the ceded territory if left as one whole had sufficient population to be admitted as a state; that the Northwest Ordinance provided for the admission of States in that district which had a population of sixty thousand and that Ohio when admitted did not have more than from thirty-three to forty thousand free inhabitants; that the third article of the treaty of cession provided that the inhabitants of Louisiana were to be incorporated into the United States as soon as possible; that if Congress could divide Louisiana once, she could subdivide indefinitely whenever the population became sufficient to form a state, and thus would

(17a) Letter of Rufus Easton, op. cit.

<sup>(17)</sup> Am. State Papers, Misc., I. 400ff. This petition was presented to Congress January 4, 1805.

Louisiana be always oppressed. This part of the remonstrance against the division of Louisiana was followed by a protest against the form of government provided for the "District of Louisiana". The delegates seriously objected to (1st) being under the government of another territory; (2d) being under a governor of another territory who did not reside or hold a freehold estate in the District of Louisiana: (3d) the seat of government being at Vincennes, which was one hundred and sixty-five miles over impassable roads from them, and the governor sometimes even farther distant: (4th) the laws of Indiana Territory not being similar to those of Louisiana, e. g., slavery existed in Louisiana and was prohibited in the Northwest Territory; (5th) the absence of a Congressional law on slavery, which might make the inhabitants of the District of Louisiana feel that perhaps some day Congress would abolish it, even though by the treaty with France they were protected in their property. In short they objected to the great injustice of being under Indiana Territory; but they also objected, and, we believe, in a more serious way, to the 14th section of the Act of Congress of March 26, 1804, which declared null and void all Spanish land grants made subsequent to the treaty of San Ildefonso, and to the 15th section of this same act which settled Indians from east of the Mississippi on the land in Louisiana District. Further, they objected to the use of the inferior word "District" as applied to Louisiana in contradistinction to "Territory" as applied to Indiana and Orleans. (18) There was really much righteous wrath on the part of the Louisiana inhabitants against that part of the Act of Congress which proposed settling the Indians from the country east of the Mississippi in this district. The necessity of protecting themselves against the Indians already west of the Mississippi imposed labors and hardships on those pioneers. Even President Jefferson, who, we think, lacked here his usual foresight, warmly favored this removal of the savages. (19)

(18) Houck, Hist. Mo., II. 388.

<sup>(19)</sup> Jefferson's Writings, VIII. 249. In a letter to Horatio Gates dated July 11, 1803, speaking of Louisiana Jefferson writes: "If our legislature

The delegates then asked that the act which divided Louisiana into two territories and which provided a temporary government thereof, be repealed; that there be made a permanent division of Louisiana legally; that the Governor, Secretary, and Judges of Louisiana District be appointed by the President and reside and hold property there; that the above officers be appointed from those speaking both French and English; that the records of each county and the proceedings of the courts of Louisiana District be kept in both French and English; that Louisiana District be divided into five counties and that the people of each county elect two members for a term of two years to form with the Governor a Legislative Council; that they be protected in their slaves and be given the right to import slaves. They also asked that Louisiana District be permitted to send a delegate to Congress and that funds be apportioned and lands set apart for French and English schools in each county and also for a "seminary of learning". And, finally, they requested that private engagements which had been entered into during the Spanish rule and which were conformable to the Spanish law, be maintained: that former final judgments rendered according to the Spanish law, should not be reversed; and that former judgments which had been rendered under the Spanish law and which according to it were appealable, should still be appealable to the proper United States courts.

This petition was accompanied by a declaration of "the Representatives of the District of Louisiana, in General Assembly met", signed in St. Louis September 30, 1804. There were fifteen deputies from five districts and from Femme Osage in this latter meeting, which was held in St. Louis. The declaration was signed by the President and Secretary of the Convention on the 30th and the authenticity of their signatures was certified by Amos Stoddard, Captain and First Civil Commandant in Upper Louisiana, who added "that respect ought to be paid to what they affirm". (20) The declaration

dispose of it with the wisdom we have a right to expect, they may make it the means of tempting all our Indians on the East side of the Mississippi to remove to the West, and of condensing instead of scattering our population."

(20) Am. State Papers, Misc., I. 404f.

of the fifteen delegates of Upper Louisiana simply stated that "Mr. Augustus Chouteau" and "Mr. Eligius Fromentin" had been "unanimously chosen" to act "as the deputies, delegates, and agents, general and special, for the inhabitants of Louisiana, for the purpose of presenting to the honorable the Congress of the United States" the "humble petition" aforesaid. Of the sixteen names of the delegates attached to the "petition", the document first referred to above, thirteen are the same as are affixed to the "declaration". There was also a slight change in the apportionment of the delegates who signed the "declaration": there being one each from New Madrid and Femme Osage; four from Cape Girardeau; two from Ste. Genevieve; four from St. Louis and dependencies; and three from St. Charles and dependencies. (21)

This memorial or petition as adopted and transmitted to Congress by Auguste Chouteau, was quite different from the one originally prepared. No early public document of Missouri down to the framing of Missouri's First Constitution in 1820 and the Solemn Public Act of Missouri's First Legislature in 1821, has a more interesting history than this one. It involved the first successful wire-pulling in Missouri history, and had it not been for an unnamed schoolmaster, might have resulted very disastrously for Missouri. The inner history of this remarkable document is set forth in a letter of Rufus Easton, dated at St. Louis January 17, 1805, to President Jefferson. He wrote that immediately after the Act of Congress of 1804 became known in Missouri, about twenty of the inhabitants of St. Louis assembled with a view to appoint a committee which was to call a convention of delegates from the different districts, and that this convention was to form a plan of government for upper Louisiana. (22) The whole affair seems to have been arranged by the

<sup>(21)</sup> Houck gives the names of eighteen delegates who signed the petition dated September 29, 1804. This authority seems to have combined the names of all the delegates who signed this petition with the two new members who signed the "declaration" of September 30, 1804. Cf. Houck, Hist. Mo., II. 391.

<sup>(22)</sup> Op. cit. Easton said that these twenty inhabitants met on April

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French inhabitants, as no American was invited, although there was a number of prominent ones here. It was so slated that a majority of the delegates to be selected was to be of the French interest by having them elected by committees who in turn were chosen principally by French villages. How successfully the plan worked is evident from the result of the election. Of the sixteen signers of the "petition", seven were Americans and nine Frenchmen; and of the total eighteen signers of both documents, nine were Americans and nine Frenchmen. The name of Stephen Byrd, who was a delegate to the Constitutional Convention of 1820, appears in the "declaration" as a delegate from Cape Girardeau. gius Fromentin, one of the delegates from New Madrid, seems to have been the framer of the "petition", as he is credited with being the most learned. In 1812 this man was one of the first United States Senators from the State of Louisiana. Practically all the French and American delegates were men of wealth and held large land tracts, and this placed them in perfect accord regarding the Spanish land grants. (23)

The original petition drafted by this convention recommended in reality a "gouvernement militaire". It provided that they have a Governor residing in the territory possessing both civil and military jurisdiction; that there be Commandants for each district possessing like powers, with an appeal to the Governor in certain cases; that there be no trials by jury "except in such cases as in the opinion of the Governor or Commodant justice should absolutely require it for special cause to be shown"; and that the practice of lawyers be entirely prohibited. It compared the Governor and Judges of the Indiana Territory to "foreign Bashaws—to Pro-prætors and Pro-Consuls under the more modest name of Governor and judges sent here to rule over the people and to write liberty as had been done in Venice upon our prison walls—"; and

(23) Houck, Hist. Mo., II. 39ff.

<sup>2, 1804,</sup> to peruse the bill of Congress of March 26. The date of this meeting, as given, may be correct, but, if so, it was the proposed bill that was perused, since the law of March 26 could not have reached St. Louis by April 2.

declared that the treaty of cession had been broken: and "a motion was made by one of the members to call upon the Emperor of France thro' his Ministers to enforce a fullfillment."

This draft of the petition was presented to Captain Stoddard, who made several slight changes in it so as to obtain for it a reading in Congress. It was then again considered by the convention and singularly failed to pass. Easton gives the following reason for this failure: "But for a person who resided some years within the United States in character of a school-master who understands the French language, catching at the popular declamation of some members of Congress-Governed by the principles advanced in the memorial of Orleans and fired with ambition to distinguish himself in the political world this original plan would not have been changed-The flame of his eloquence and unparallelled knowledge of American politics changed the tone to the whole system and the plan was to ridicule the Majority of Congress for their professions of Republicanism and boasted love of liberty-". (24)

After the petition had been changed to its present and final form, it was entrusted to Chouteau to take to Washington. There is little doubt that the wealthy French inhabitants favored a military government without civil law and lawyers. Chouteau had presented his views for such a government to Gallatin during the previous summer of 1804, when many of the leading Frenchmen of Louisiana District were in Washington. Gallatin wrote to President Jefferson regarding this interview with Chouteau, and stated, that while he respected the zeal and ability of the Frenchman, he did not endorse his views and those of his business associates. It is by no means improbable that when Chouteau carried this democratic petition of September, 1804, to Washington, he still pleaded for the military system. The democratic ideals

<sup>(24)</sup> Easton's Letter, op. cit. Cf. also Fortier, Hist. La., III. 16f., and Am. State Papers, Misc., I. 396ff.

After careful searching we have been unable to ascertain who this unique school-master was.

of Jefferson, however, made this plea a vain one, and nothing more was heard of the "gouvernement militaire". (25)

(25) Houck, Hist. Mo., II. 400.

The following very valuable letter is copied from note No. 163, p. 355, vol. II., of Robinson, Louisiana, 1785-1807: "The following extract from a letter (entitled Separate observations") dated St. Louis, November 4, 1804 (conserved in the Bureau of Rolls and Library, Department of State, Territorial Papers, vol. I., "Louisiana"), shows conditions in Upper Louisiana or

Louisiana Territory:

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"I conceive it may not be improper to mention some circumstances concerning the Petition from the Committee held in September last at this Place, before my arrival, for tho' I have not read that Memorial I have heard it much spoken of, and I have reason to think a Paper, said to be a copy of it, may have been sent to the public printer for insertion, in which case it will be found different from the original, that pretended having been taken from the first draft of it before its ultimate correction. It seems the act of Congress of March last concerning Louisiana created some discontent in the minds of People here, they wished and expected a Government of their own. It hurt their pride to be made dependent on Indiana for officers and laws, because their population and territory are much more extensive than those of their neighbours. They conceived the act of Congress infringed some of the Rights insured to them by the Treaty, placing them in a more degraded situation than other territories of the United States. They formed a Convention in which a Committee was chosen to draw up a Petition to Congress. The Member who made the sketch of the Memorial was sent out before my arrival and I have not seen him, but I am told he is a man of warm passions and I conceive him to be probably of a character such as I have known in the French Revolution, who allowed their exalted ideas to run away with their understanding and could not distinguish between the true principles of liberty, and those leading to Anarchy and despotism. . . . I have a particular satisfaction at the time in saying that the inhabitants are much pleased with Govr Harrison now here. His affability and easy access form a strong contrast with what they had been accustomed to-all the disinterested sensible men among them are glad of the change of Government, but there are some, as you will easily believe who have prejudices which time and experience will wipe away-there are others who enjoyed, or were directly concerned in, extensive privileges, or had certain advantages which attached them to the former system. I am speaking of the French part of the inhabitants, whose sentiments I know best by their considering me as one of themselves on account of the language and my very long residence in France. The appearance of hostilities-an idea many of them have of this part of the country being about to be receded to that nation for the Floridas, are topics often brought forward which have tended to show me the real inclinations of some and they open their minds with less reserve by not considering me in the light of a stranger." -Letter unsigned-"From a man who went up Mississippi to become acquainted with Peltry trade."

The dislike of lawyers on the part of the French inhabitants is also seen in the Historical and Political Reflections on Louisiana by Paul Alliot. (Robertson, op. cit., I. 135, 137.) Speaking of 8t. Louis that physical says: "The magistrate who renders justice does not molest or percesute any citizen. He is a father whose entrails are at all times open to his children." "None those blood-suckers known under the names of balliffs, lawyers, and solicitors

are seen there." (This was written before the transfer in 1803.)

Within two months after this first petition had been presented to Congress, an act was passed on March 3, 1805, which remedied most of the objections and granted some of the requests set forth by the St. Louis convention of September, 1804. (26) It was rather satisfactory to the French inhabitants, as it established a separate centralized form of government. The act provided: 1st, that the "District of Louisiana" be changed to the "Territory of Louisiana"; 2nd that this territory be separated from the government of Indiana territory; and 3d that a new government of the territory of Louisiana be established. As Missouri by this act became a territory of the lowest grade and from this stage gradually advanced to statehood, it is a matter of importance to notice the plan of government outlined by this second organic act of Congress relating to Missouri.

The executive power was lodged in the hands of the Governor, whose tenure was appointive by the President of the United States, whose term was three years, and who must reside in the territory. His powers were wide, being both executive and legislative in their scope. He was commander of the militia, superintendent ex-officio of Indian affairs, had the power of appointment and command of all officers in militia below the rank of general officers, could grant pardons and reprieves under certain limitations, could divide the territory into districts where the Indian titles were extinct, and appoint magistrates for civil and military purposes. Asso-

(26) Stat. at Large, II. 331f. Passed at second session of Eighth Congress, March 3, 1805, and went into effect July 4, 1805.

The following report made by Doctor John Watkins to William C. C. Claiborne in 1804 relating to lower Louislana, shows that the sentiment of the French inhabitants in that part of the country on government and politics was quite similar to what obtained in the upper portion of Louislana:—
"They wish to be allowed a member upon the floor of Congress, to represent their true interests and situations. Sometimes they desire to enter immediately into all the benefits and advantages of a State Government, but they generally stop short at the difficulties of popular representation, in their present State of political knowledge. The expenses of public buildings, Courtouses, Prisons, etc., the increase of taxes, the acrimony of elections, Courts of Justice, Juries, pleadings at Law and Lawyers, with the difficulties of language has made most of the sensible reflecting people fall into the opinion that a Government of Commandancies (at any rate for the Country) is best adapted to their present situations." (Robertson, op. cit., II. 319.)

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ciated with the Governor was a Secretary, whose duties were clerical, and who became governor when that office was vacant. His term was four years, and he was also required to live in the territory. His tenure was the same as that of the Governor.

The legislative power was vested in the Governor and the three territorial Judges, or a majority of them. This body or Legislative Council had power to establish inferior tribunals and prescribe their duties. It was empowered to make all laws conducive to the good government of the inhabitants of the territory provided no law should be enacted inconsistent with the Constitution and Laws of the United States or abridging the religious freedom of the inhabitants or dispensing with trial by jury in both civil and criminal cases under certain regulations. All laws passed by this council were subject to the ratification of the President and Congress.

The judicial power was vested in three Judges appointed by the President for four years, and in such inferior tribunals as might be established by the Legislative Council. The three Judges or any two of them were to hold two courts annually in the Territory and to have the same jurisdiction as that formerly held by the Judges of Indiana Territory.

The compensation for the five foregoing officers was the same as obtained in Indiana Territory. All were required to take an oath of allegiance to the United States. It was expressly provided that all existing laws were to remain in force until modified.

Such are the general provisions of this act. It did much to mollify the inhabitants of Upper Louisiana, and, although not granting them the elective tenure nor a delegate in Congress, it was far more satisfactory than the previous act. They now had a territory and a government that were not united to or under any other subdivision of the United States, and, although their new officials were appointed in Washington, and subject in every express way to the national government, still they were required to reside in the territory, and this alone was worth a great deal to the inhabitants of

a pioneer country where distance played such an important part in law administration. (27)

During the following half decade the Territory of Louisiana made rapid strides in development. The increase of population alone justified a change in the governmental machinery provided for by the act of 1805. The population of the territory in 1810 had risen to 19,976, being distributed among the five districts as follows: Cape Girardeau, 3,888; New Madrid, 2,296; St. Charles, 3,505; Ste. Genevieve, 4,620; and St. Louis, 5,667. (28) This remarkable growth in population naturally created desire for a higher grade of territorial government. It was the wish of a large majority of the inhabitants of this territory that the American policy of self-government be applied to them. And this was soon revealed in the numerous petitions presented to Congress on that subject. Never in the history of Missouri, during neither the French, Spanish, American, Territorial, nor State Period, have her inhabitants framed, signed, and presented so many petitions to Congress as issued from the Territory of Louisiana from 1810 to 1812 inclusive. But, to us even this seems less remarkable than is the failure heretofore of every writer on Missouri history to notice a single petition

<sup>(27)</sup> Showing the sentiment in Louisiana Territory shortly after this act of Congress of 1805, is the following extract from a letter of Judge Coburn to Madison, dated August 15, 1807, Mayville, Kentucky. (Robinson, op. cit., II. 359f.)

<sup>&</sup>quot;I would here take the liberty to remark, that altho some of our American Citizens have entertained strong prejudices, against the manners, habits, language and religion of the French settlers in Louisiana. Those settlers appear to me, to be an inoffensive and peaceable people, little disposed to disturb the harmony of Government, and I think they will be found to be easily governed; as they are strangers to riot, tumults and drunkenness. It is true that, they are unhappy at this particular period. And they assign as reasons; that their land claims are unsettled, and that the administration of Justice is dilatory. That there should be some causes of uneasiness is by no means surprising. The change of Government, the prospect that their language, religion, manners and influence are about to be swallowed up in the American character, are some causes of unpleasant sensations. It only requires that a temper of conciliation, mixed with impartial Justice should be observed by the rulers of the Territory—That they should feel and act superior to national, local, religious or civil distinctions; and endeavor to blend in a common mass, the various characters of settlers who may be resident in that country.

<sup>(28)</sup> U. S. Census, 1900, Pop., I. 27f.

of that time. This silence can be construed only as the result of a lack of information, since the greatest importance always attaches to those documents that reflect the sentiment of so large a district of people in regard to a change in their organic law. At least fifteen of these petitions appeared, twelve of which are still in existence. These twelve requested that the Territory of Louisiana be raised from a territory of the first to one of the second grade. One of the other petitions, very significantly, prayed that no alteration be made in the form of government. (29)

On January 6, 1810, there was presented to Congress "a petition of sundry inhabitants of the Territory of Louisiana, praying that the second grade of Territorial Government may be established in said Territory." This was probably one of the first of these petitions and, we think, was drawn up and signed in 1809. It based its request for a higher grade of territorial government on the treaty of cession, on the unsatisfactory exercise of both legislative and judicial powers when vested in the same persons, and on the large size of the militia in the Territory of Louisiana compared with the militia in either Indiana or Mississippi territories. This petition was referred to a committee on January 9, 1810, which reported, on January 22d, a bill "further to provide for the government of the Territory of Louisiana." This bill after its second reading was referred to the Committee of the Whole, in which it was not brought up during that session.

<sup>(29)</sup> Six hundred and thirty-six signatures are attached to five of these petitions, the number of signatures on the other seven petitions was not These petitions were first noticed by us in the Annals of Congress. We had always wondered at the silence of Missouri historians on this point, and could hardly be convinced that Missouri became a territory of the second grade without there having been an application for same on the part of the inhabitants of Louisiana Territory. An examination of the Annals proved our conclusion to be correct. Mr. Parker's Calendar of Papers in Washington Archives relating to the Territories of the United States (Carnegie Institution, 1911) showed that these petitions were still in existence. Finally, after having made futile application to the House Librarian we interested Dr. J. Franklin Jameson who at our request placed Dr. N. D. Mereness on the trail of these documents. Dr. Mereness not only located all of these petitions but also made copies of same. These copies are now in the library of The State Hist. Soc. of Mo. The original documents are still preserved in the House Files in Washington, D. C.

(30) On January 15, 1810, an exact copy of the foregoing petition was referred in the House. This latter document had attached to it about two hundred and seventy-three signatures, the former had seventy-six. (31) On February 22, 1810, several petitions to Congress "from a number of the inhabitants of the Territory of Louisiana" were presented to the Senate. Their purpose and wording were, we infer, the same as the other two presented to the House. (32) Another duplicate petition, of this year, bearing only nine signatures was presented to the House, (33) but nothing was accomplished by any of these at this time.

At the third session of the Eleventh Congress, on January 3, 1811, a committee, appointed by the House on De-

(30) Annals of Congress, I. 1157, 1253. Following is a copy of this petition as found in the House Files by Dr. Mereness:

[Dec. 1809?] Petition of sundry inhabitants of the territory of Louisiana—Referred Jan. 9th, 1810. [No. 3458 in Parker.]

[This petition is as follows:] To the honble the Sen. and Ho. of Reps. of the U. S., in Cong. assembled

The petition of the undersigned inhabitants of the Territory of La., most respectfully sheweth.

That they have waited with anxious but silent expectation for the arrival of that period, when pursuance of the treaty by which Louisiana was ceded to the United States, they are to be admitted "according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of Citizens of the United States." These rights they do humbly conceive cannot be enjoyed while the judicial and legislative powers are vested in the same persons. Where powers are combined which the constitution requires should be separate, [sic] and where the maker of laws, is also obliged to expound, and to decide upon them.

Your petitioners are fully impressed with the idea that legislative powers are never better, nor more satisfactorily exercised than when committed to those persons who are elected for that purpose by the people themselves, whose conduct must be regulated by those very laws thus made. The inhabitants of the territory of Orleans, have already obtained those rights which your petitioners now ask, and to which they deem themselves also entitled. The last returns of the militia of this territory will be found to exceed those of the Indiana and Mississippi territory, and the number is daily increased by rapid emigrations to this territory. Confiding therefore, in the justice and wisdom of your homble bodies, they most respectfully ask, that a law may be passed for enabling the inhabitants of this territory to have and enjoy the rights and privileges consequent upon a second grade of terl gov't, and that the same may be established in this territory.

And your petitrs as in duty bound will ever pray.

[This petitn is printed] [76 signatures]

- (31) Ibid. Found in House Files.
- (32) Ibid., p. 578.
- (33) Ibid. Found in House Files.

cember 11, 1810, "presented a bill further providing for the government of the Territory of Louisiana". After a second reading the bill was lost in the Committee of the Whole and this Congress expired without passing an act on this matter. (34)

During the summer of 1811 numerous petitions of this kind were framed and signed in Louisiana Territory. Some of these originated in the Arkansas country and others in that part that lies within the present boundaries of Missouri. They were all similar in tone and argument to the 1810 petitions. The desire for a second grade of territorial government was strong, and this wish was strengthened by the still unsettled or unsatisfactorily settled condition of the land claims. The inhabitants of Louisiana Territory not only wanted a voice in their territorial or local government, but were equally desirous of having their wishes voiced in Congress by a regularly elected territorial delegate. (35) Not

(34) Annals of Congress, 3d Sess., 11th Cong. (1810-11), p. 486.
(35) Sometime during the session of 1811-12 five petitions were presented to the House. Each of the five is as follows according to Dr. N. D. Mereness:

[Referred 1811-12.] Each of the "five petitions" listed by Parker under No. 3468 is in part as follows: To the Honble the sen. & Ho of Reps-Sheweth; That convinced as well of their rights in pursuance of the treaty which ceded La. to the U.S., to be admitted "according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of the citizens of the United States," as of the advantages resulting from representative government, which rights and advantages have not been extended to them. They hope indeed, that as a free people, so far as the policy of territorial government will admit, they may have a partial voice in the government which they support. Their sister territories of Orleans, Mississippi and Indiana, are fast approaching to political manhood, under the fostering hand of the General Government; while La. with a large and fast increasing population have not been admitted to the enjoyment of the same political blessings; all the powers of the government, as well executive and legislative, as legislative and judicial, are blended together, not only contrary to the treaty and "Federal Constitution," but also the political safety and happiness of the people. A large majority of your petitioners depend on agriculture for support, whose claims to land form the principal hope of themselves and families, and more than two-thirds of their claims have been rejected by the board of commisses; from whose official representations they have little to hope, and much prejudice to fear; for these reasons which are all important to your petitioners, they now most respectfully ask of your honble body the passage of a law, which will admit them into what is denominated the second grade of territorial govt, (provided no better can be devised) which entitle them to a delegate in Congress by whom they can make known their only were many of these petitions presented to the twelfth Congress at its first session but on December 27, 1811, there was also presented to the House "a certified copy of a presentment by the grand jury of the 'District of St. Charles', in said Territory, representing that the second grade of Territorial government ought to be extended to the Territory; that the judges of the general court ought to reside in the Territory; and that further and equitable provisions ought to be made in favor of rejected land claims". (36) These were

unfortunate situation. And your petitioners as in duty bound will ever pray. [Found in House Files.]

Another petition referred December 27, 1811, is an exact copy of the above (House Files, Parker, op. cit., No. 3480.); another duplicate was read January 6, 1812. (Senate Files, Parker, op. cit., No. 3481.); and another bearing one hundred and ninety signatures was also presented to Congress. (House Files, Parker, op. cit., No. 3487.) The following petition, dated Arkansas, 9th Sept. 1811, was referred Dec. 7, 1811.—

Petition (dated Arkansas, 9th Septr 1811) for the Second grade of Government.—No. 3472 in Parker—Referred Dec. 7, 1811 to Comes of the whole House on the bill for the Govt of said Territory. Bill postponed in the Senate April 22, 1812.

This petitn is as follows: To the Honble--The Petition of the undersigned inhabitants of the Territory of La. Respectfully sheweth: That convinced as well of their rights (in pursuance of the Treaty which ceded La. to th[e] U. S.) to be admitted according to the Principals [sic] of the Federal Constitution to the enjoyment of all the rights, advantages, and immunities of Citizens [o]f the U. S.—as of the advantages resulting from a representative Gov't, which Rights and Advantages have not been extended to them-they hope indeed that as a free People so far as the Policy of Terl Gov't will admit they may have a Partial Voice in the Govt wch [which] they support. sister Territories of Orleans, Mississippi and Indiana are fast approaching to Political Manhood, under the Fostering hand of the Gen'l Gov't, while La. with a large and fast increasing Population, has not been admitted to the enjoyment of the same Political blessing .- all the Powers of the Gov't as well Executive and legislative, as Legislative and Judicial are blended together not only Contrary to the Treaty and Federal Constitution but also to the political safety and happiness of the People.

A large majority of your Petitioners depend on Agriculture for support whose claims to lands form the Principal hope of themselves and families and more than two thirds [off their just Claims have been rejected by the board of Commissioners from whose official Representations they have little to

For these reasons wch are all important to your Petitioners they now most respectfully ask of your Honble body, the Passage of a Law wch will admit them into what is denominated the second grade of Terl Govt, wch will entitle them to a delegate in Cong. by whom they may make known their unfortunate situation—and your Petitrs as in duty bound will ever Pray. [88 signatures. The original of this petitn is not printed. Found in House Files.]

Cf. also Annals of Congress, p. 557.

(36) Annals of Congress, I. 584f.

referred and undoubtedly were of the greatest influence in the final passage of the law of June 4, 1812.

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Although the local pressure on Congress favoring a higher grade of territorial government in Louisiana Territory was strong, we are hardly surprised to discover some undercurrent of opinion in this district that opposed raising the status of the territory. We have noticed how the act of 1805 was satisfactory to most of the inhabitants of Upper Louisiana especially to the French portion, and also why they preferred a centralized form of government. Wherever the French influence was strong whether in Indiana Territory, Louisiana Territory, or the Territory of Orleans, the preference of that race has been for few officials, concentration of power in the hands of a few, and either an indifference or opposition to self-government unless some vital problem could be solved by no other means. (37) In Louisiana Territory the special problem that concerned many, including both French and American inhabitants, was the land claim or land grant problem. Many claims had not been settled and many had been refused. The settlers, both old and new, thought that more lenient laws regulating these claims would be passed if only the Territory had a delegate in Congress. There was also of course a sincere, strong sentiment for selfgovernment in Louisiana Territory, but we believe that the opposition to this self-government or representative government would have been stronger than it was had not there been pressing for settlement hundreds of land claims. At all events we have record of one remonstrance and petition being presented to Congress that opposed a change in government. On December 7, 1811, there was presented to the House a remonstrance and petition of sundry inhabitants of St. Louis

<sup>(37)</sup> Indiana Territory in 1800 was largely French. They cared nothing for self-government. The influx of American settlers created a desire for a higher grade of territorial government. The French joined in this demand for self-government since through it they could make slavery more secure, which was a great object to be attained owing to the provisions of the Northwest Ordinance on that point. Cf. also Webster, Homer J., William Henry Harrison's Administration of Indiana Territory, in Ind. Hist. Soc. Pub., IV. 202ff. Cf. Chapter VI. of this work on the peculiar sentiment exhibited in Orleans Territory on the eve of framing a State Constitution.

"stating the many injuries and inconveniences which would result from a change in their form of government, and praying that no alteration may be made in their said form of government". (38) This was referred to a committee from which it was never reported. The demand of the inhabitants of Louisiana for the higher grade of territorial government had become too insistent for Congress to longer delay.

In the year 1812 affairs reached a focus that made necessary at least some kind of action. The Territory of Orleans was admitted into the Union April 8, 1812, under the name of the State of Louisiana. This made expedient, though not essential, as some authorities have supposed, a change in name of the Territory of Louisiana. Action was taken by Congress, and on June 4, 1812, a law was passed changing the name of the Territory of Louisiana to the Territory of Missouri. (39) It was this law which gave to Missouri her present name; and it is very probable that had the Territory of Orleans taken the name of State of Orleans on its admission into the Union, then the Territory of Louisiana would have retained its name and in 1821 would have been admitted as the State of Louisiana. This act of June 4, 1812, raised Missouri to the second grade of territories and not only gave the inhabitants control of the lower house of the legislature through the elective tenure and the election of a delegate to Congress, but also provided in section fourteen for a bill of rights. (40)

The government provided for by this act was far more complex in character than that in the act of 1805. The executive authority was still vested in a Governor whose term, tenure, and powers were the same as before, except that he had some enumerated powers, including that of convening the legislature on "extraordinary occasions". His veto

<sup>(38)</sup> Abridg. of Debates of Cong., IV. 434.

<sup>(39)</sup> Stat. at Large, II. 743-747; Cf. also Mo. Ter. Laws, 1. 8-13.

<sup>(40)</sup> There are sixteen sections in this law, but they will not be taken up here in detail, as their importance and influence on Missouri's First Constitution were so great that they will be minutely considered in the chapter dealing with the sources of that instrument.

power was absolute. No change was made in the term, tenure, and duties of the Secretary.

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It was in the legislative branch of the new government that the greatest changes are noticed. The legislative power was vested in a bicameral body called the "general assembly". This was composed of a Legislative Council and a House of Representatives. The former consisted of nine members, five making a quorum, appointed for five years by the President of the United States from a list of eighteen persons made by the territorial House of Representatives. Provision was made for filling vacancies by the President appointing one of two persons nominated by the lower house. Their qualifications were: that they should have resided in the territory for at least one year preceding appointment; that they should be at least twenty-five years of age; that they should have property of at least two hundred acres in the territory. They were disqualified from holding any other office of profit under the territorial government except that of justice of the peace. It was in the House of Representatives that the greatest innovation was made. This body was composed of representatives elected for two years by the people of the territory. The apportionment was on the basis of one member to every five hundred free, white, male inhabitants until the number of representatives reached twenty-five, when the ratio was left under the regulation of the general assembly. The qualifications for representatives were lower in nearly every respect than for members of the Council: the age qualification was twenty-one years; the residence qualification was the same as in the case of members of the Council; and the property qualification required one to be a freeholder in the county from which he was elected. Vacancies were filled by a new county election on writ of the Governor. Annual meetings of the General Assembly were provided for. The place of meeting was at St. Louis, and the time the first Monday in December unless the General Assembly set a different date. The Governor was empowered to lay off the territory into convenient counties for the election of thirteen representatives.

The electors of representatives consisted of all the free, white, male citizens of the United States who were twentyone years of age, had resided in the territory twelve months before the election, and had paid a territorial or county tax assessment made at least six months before the election. It might be noticed in this connection that the tax qualification for electors was purposely omitted from Missouri's first Constitution, and, so far as the later political careers of the delegates that framed that document are concerned, it was a very wise omission. It was provided in the act of 1812 that all free, white, male persons who were inhabitants of Louisiana on December 20, 1803, and all free, white, male citizens of the United States who had immigrated to Louisiana since December 20, 1803, or who might hereafter do so, if otherwise qualified, could hold any office of honor, trust or profit in the territory under the United States or the territory, and vote for members of the General Assembly and a Delegate to Congress during the temporary government provided for by that act.

The powers of the General Assembly were large, comprising the power to make laws, civil and criminal; to establish inferior courts and prescribe their jurisdiction; to define the powers and duties of the justices of the peace and other civil officers of the territory; to regulate and fix fees, etc. There were certain express limitations placed on their power. however, that are important to notice. All bills had to be passed by a majority of each house and receive the approbation (signature) of the governor. They were by implication prohibited from passing any acts which would be inconsistent with the large number of privileges and rights reserved to the people and enumerated at some length in section fourteen of the law. This section fourteen is a very interesting paragraph, as it is the first bill of rights that Missourians ever had, excepting those guaranteed in the United States Constitution, and is an epitome of the one included in the constitution of 1820. The General Assembly was also prohibited by express provision from interfering with the primary disposal of the soil of the United States, etc., and from levying any tax or impost on the navigable waters in or touching the territory. This provision is also found in the constitution of 1820.

The judiciary was composed of a superior court, inferior courts and courts of justice of the peace. The superior court alone was set forth in detail, the others being left under the regulation of the General Assembly and Governor. This court was the same in composition and in term and tenure of members as that provided for in the act of 1805. Certain regulations were provided as regards its.jurisdiction, and power was granted it and the inferior courts to appoint their clerks.

Some miscellaneous provisions were also set forth that are important. All officials were required to take an oath to support the Constitution of the United States and discharge faithfully the duties of their office. The citizens of the territory were given the right to elect one delegate to Congress. Schools and education were urged, and encouragement and aid promised from the United States lands in the territory. It was provided that the acts of 1804 and 1805 when inconsistent with this act were repealed.

Pursuant to the power granted him in the seventh section of the act of 1812, Benjamin Howard, Governor of the Territory of Louisiana, by proclamation issued October 1, 1812, divided the new Territory of Missouri into the five counties of St. Charles, St. Louis, Ste. Genevieve, Cape Girardeau, and New Madrid, and gave them their boundaries. (41) Provision was made for the election from these counties of territorial representatives to the General Assembly and also a Delegate to Congress. Appended to this proclamation was a statement setting forth the qualifications of representatives and electors—which was taken from the act of Congress of June 4, 1812. Thus was set in working the new government of the Territory of Missouri.

An attempt was made to amend the law of 1812, and on January 7, 1813, on motion of Mr. Hempstead (of Missouri)

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<sup>(41)</sup> Am. State Papers, Misc., II. 202f; Scharf, op. cit., I. 557f.

a committee was appointed by the House of Representatives "to inquire if any, and if any what, amendments are necessary to be made" to that act. (42) On January 29, 1813, this committee reported and recommended no alterations. (43) The problem suggested to the committee was to settle the doubts that some entertained as to whether Missouri's Territorial Delegate to Congress, who had been elected on November 2, 1812, in pursuance of the act of Congress of that year, could hold his seat after March 3, 1813. The committee decided that as he was elected for two years, he could hold his seat for that time, and that no alteration in the law of 1812 was necessary, as it appeared perfectly clear on this point.

Population kept increasing rapidly in Missouri. Lawence county was established by the Territorial Legislature January 15, 1815, (44) and just a little over a year later Howard county, the "mother of counties" and one of the empire counties of Missouri, was erected by act of January 23, 1816. (45) On January 21, 1816, on motion of Mr. Easton in the House of Representatives, the Committee on the Judiciary was instructed to inquire if any, and what, alterations were necessary to be made in the act entitled "An act providing for the government of the Territory of Missouri" approved June 4, 1812". (46) This committee on March 6, 1816, reported a bill to alter certain parts of the act of 1812, which without any amendment finally became the organic act of Congress of April 29, 1816, by which Missouri became a territory of the highest grade. (47) By this law, the elective tenure was also applied to the Legislative Council, one member being elected from each county. The term was reduced to two years and qualifications remained the same as in the act of 1812. A majority of the members constituted a quorum. The regular sessions of the General As-

<sup>(42)</sup> Annals of Congress, p. 618.

<sup>(43)</sup> Ibid., pp. 929f; Am. State Papers, Misc., II. 201f.

<sup>(44)</sup> Mo. Ter. Laws, pp. 354ff.

<sup>(45)</sup> Ibid., pp. 460ff.

<sup>(46)</sup> Annals of Congress, pp. 1047, 1049, 1358, 1362.

<sup>(47)</sup> Stat. at Large, II. 328; Mo. Ter. Laws, p. 14.

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sembly were changed from annual to biennial sessions. Everything else of the act of 1812 remained unchanged except the provisions relating to the judiciary. It was the provisions in this act of 1816 relating to the judiciary that was its most objectionable feature to Missourians, as is expressly set forth in the very earliest petitions for statehood in 1817. (48) The General Assembly was authorized to require the judges of the superior court to hold superior and circuit courts; to appoint the times and places for the same; and to make rules and regulations regarding these courts. The circuit court was to be composed of one of the said judges and to have jurisdiction in all criminal cases, exclusive original jurisdiction in capital cases, and original jurisdiction in all civil cases of \$100.00 value or over. The superior and circuit courts were to possess chancery powers as well as common law jurisdiction in all civil cases, provided that in matters of law and equity, in all cases, appeal lay from the circuit courts to the superior court of the territory.

The year following this law of Congress of 1816, which made Missouri a territory of the highest rank, saw the inhabitants here petitioning Congress for that greatest of all boons -the privilege of statehood. It will be our purpose in the next chapter to give, in the first place, a short history of these efforts on the part of Missouri's pioneers to obtain permission of the National Legislature to frame a state constitution; and, in the second, to sketch the struggle in Congress itself over this mighty question from 1818 to 1820. It is hardly an exaggeration to say that never in the history of this nation since the adoption of the Constitution has there ever been a purely domestic question, except of course the Civil War of 1861-65, that has so stirred the country from border to border; has been so ominous in so many of its phases; that for so many months literally shook the foundations of the United States and brought forth declarations and prophecies of the most calamitous character from the mouths and pens

<sup>(48)</sup> This will receive further consideration in the chapter following.

of men who even today rank foremost in the galaxy of American Statesmen and authors, as the famous Missouri Question.

FLOYD C. SHOEMAKER,
Assistant Librarian of The State Historical
Society of Missouri.

Editor's Note: This article forms the first chapter of Mr. Shoemaker's forthcoming' publication on "Missouri's Struggle for Admission", and we consider it a very valuable contribution to our knowledge of Middle West history. Mr. Shoemaker bas not only made some remarkable researches in bringing to light so many hitherto unknown petitions, documents and letters, but has taken great pains to interpret these in a scholarly and interesting manner. He has by these means cleared up several formerly unsolved problems in the early history of Upper Louisiana and Missouri Territory. The Review has been promised sketches of some of the other chapters of this work and these will appear sometime in the future. The completed chapters will form the most important publication on the constitutional history of Missouri.

### TRAVEL INTO MISSOURI IN OCTOBER, 1838.

BY EDUARD ZIMMERMANN.

From among a number of old letters and diaries of some of the German settlers in Missouri the following account of a foot-tour extending about eighty miles into the state is described. The writer was a German, Eduard Zimmermann, who had recently come from Europe. The angle at which he views American conditions is not wholly without interest. This being the time when the great influx of Germans began in Missouri, this man's account doubtless was read with the keenest interest by his friends at home. The translation reads as follows:

"On the twelfth of October, I left my stopping place, which is a few miles east of the Mississippi river in the state of Illinois, in order to go to St. Louis. In company with a friend who had but recently come from Germany, I intend to spend a few weeks in wandering through at least a part of the new promised land of the state of Missouri. We reached the Father of Waters at sunset, just in time to take a steamboat to the Missouri side. From sunrise to sunset the ferry boats do not run because of various dangers.

Previously I had seen St. Louis only during the hottest time of the year. How striking then was the difference between that season and this! Now activity and joyousness was seen on every hand. During my other visit all the shops were closed and empty, the streets forsaken and the places of amusement dead. Cholera and bilious fever raged as for a wager, and the hearse alone was constantly on the go. Sickness, death, burial, these were the themes of all conversation. Precautions and medical directions the sole objects of reflection and thought. How entirely different it was now. The streets were lively, the coffee houses and other places of entertainment were filled with people, the most care-free enjoyment of life had taken the place of deathly anxiety and precaution.

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St. Louis is after all a second New Orleans, in spite of Duden's statement to the contrary. This is the place where the inestimable quantities of produce from the entire Missouri Valley and of the upper Mississippi Valley accumulate in order to find a good and speedy market on the Gulf of Mexico. Here is also the gathering place of men and merchandise coming from the Ohio River and the eastern states. The extra distance from the mouth of the Ohio is wholly disregarded because here the shippers and the travelers are certain of finding opportunities of rapid transportation to the mouth of the Mississippi, regardless of the stand of the water. Trade and commerce flourish more and more and will be brought to a still higher degree of efficiency when the proposed waterways through the state of Illinois are completed. Settlers from all the states of North America come here, and the still greater mass of European immigrants arrive here from New Orleans, from the seaports of the Atlantic, from New York, Philadelphia and Baltimore, to pour themselves into the fertile plains of Illinois, into the much-praised Missouri, into the recently opened state of Arkansas, even into southern Texas, where not only the beauties of nature but the exceptionally alluring material inducements attract the agriculturists.

St. Louis numbers at present scarcely more than ten thousand inhabitants, and yet it surpasses in the varied mixture of its population, in the great number of strangers within its midst and in its geographic significance and interest every city of its size in the old and the new world. Beside the many descendants of genuine Indian blood, a large part of the population consists of Frenchmen, Germans and Spaniards. The descendants of the Britons, of course, constitute the majority. Several thousand negro slaves and free colored people live here, and if on Sunday the devout are at their churches, and the care-free inhabitants have been lured to the country, then one might easily imagine himself to be walking on the streets of some city in San Domingo. Only black faces are then seen on the streets, only gaudily dressed groups of colored children play before the houses. In the

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larger hotels and the 'entertainments' the haggard American gentlemen sit around the hearth in a semicircle, showing an almost Indian-like apathy, their legs crossed, rocking themselves and chewing tobacco, (a custom which in the interior of America is by no means regarded as improper). The Frenchman with lighted cigar hops around the billiard table in the coffee-house and wastes more breath in a minute than an American does in an entire day. The easy-going German, too, finds his place of entertainment, where the beverages are tolerable and the stay homelike and pleasant, and there amid the smoke of the pipes and the clinking of glasses a German song and the sound of musical instruments are heard.

Since the distribution of Duden's book St. Louis has become the main goal and gathering place, especially of the German immigrants. Those who live here or in the neighborhood are well informed regarding the affairs in Germany, and often times know more than their friends at home, because the newspapers are not subjected to censorship.

St. Louis has grown rapidly during recent years. This growth is hastened by the discovery of near-by lead mines, by the rapidly growing population in the interior of Missouri, and especially by the rapidly increasing Illinois town on the opposite bank of the river.

One of the main branches of trade in the city is the fur trade which is carried on by a company of specially privileged private citizens who have one of their main depots here. These special privileges consist, as far as I have been able to ascertain, in this, that other private individuals are not permitted to trade with the Indians for certain definite articles, especially firearms and tomahawks. These articles may be sold only by the company. The sale of intoxicating liquors is forbidden by the United States even to the fur companies, in order to prevent certain avaricious white persons from deriving exorbitant profits from this sort of trade. The enormous basin of the Missouri river which is visited annually by hired hunters who work for the fur companies (among whom there are many Germans but still more French adventurers,) furnishes thousands of buffalo hides and also quan-

tities of the still more valuable beaver pelts. Nothing is more fascinating than the stories of such hunters. The hunting expeditions usually depart from here in April or May. The usual time of service is eighteen months, of which more than half is required for the journey to and from the Rocky Mountains. Eighteen dollars and provisions, which in the far west consists almost solely of buffalo meat, constitutes their monthly wages. But then the hunters must agree to perform all sorts of service. Usually the hunters go by steam-boat as far as Liberty in Clay County, the most western town in Missouri. From there they go either on horseback or in small boats which usually have to be pulled by the men themselves, further into the interior. Council Bluffs, the outmost fortification of the United States, is about five hundred miles above St. Louis. This is said to be the farthest point to which settlements and civilization have thus far penetrated. The so-called forts further up the river on the important tributaries, the LaPlatte and the Yellowstone, have been established by the fur companies themselves, but they are in reality only pallisades not real forts, and must be regarded as simply the offices of the company. Several hundred miles west of the state of Missouri the large herds of buffalo begin. From there on these animals appear in such large herds that their actual number can no longer be accurately determined, but the space of ground which they occupy is taken as the measure of their number. At first I did not believe the stories of the hunters, but books of travel by trustworthy men assure me that the buffalo in those regions are actually counted by the mile. 'I saw five, ten, or fifteen miles of buffalo,' that is the current expression in regard to their number. The buffalo is shot with a rifle. The Indians who have a cunning way of enticing the animals into an enclosed place kill them with the bow and arrow. The buffalo is by no means dangerous and always seeks safety in flight. The beaver is caught with traps in his holes. The manner of trapping them has been learned from the Indians. Concerning the Indians I have heard various contradictory reports. Some depict them as peaceable and even honest,

while others cannot tell enough of their wicked intentions and their cunning. The various tribes differ in this regard. The relations of the Indians to the fur-trading companies must necessarily often times be strained because of the passion and the lack of self control on the part of these children of nature on the one hand and the avarice and selfishness of the whites on the other. All accounts agree that the Indians live in constant bloody feuds with one another. The Sioux, the Osages, the Delawares, the Mandans and the Blackfeet are the tribes with which the hunters have most to do on this side of the Rocky Mountains. The Blackfeet are said to be the most hostile and dangerous. In dress and manner of living the western tribes differ vastly from those which are still found in the states of the Union, though there appears to be no essential difference in their customs and their character.

We should have left St. Louis on the day following our arrival there, if we had not found many highly educated and most agreeable German immigrants who had just arrived and in whose company we felt comfortable and at home. Besides this, another cause for my stay was the horseraces which were scheduled to take place at this time, the like of which I had not seen either here or in Europe. The races took place about three miles from the city at the so-called Prairie House, a favorite place of amusement of the St. Louisans. The races were attended by large crowds. I believe indeed that these Americans are happy at such occasions, but we foreigners were not able to detect many evidences of it, for their joy and delight manifests itself in ways so much different from ours. External pomp and finery which make such a pleasing effect at our public gatherings are entirely wanting here. Varying costumes, music, songs and dancing, all that makes an European public gathering so cheerful and lively, one looks for in vain in America. The eye of the foreigner, at least, is able to distinguish only one class of people here. From the Governor to the jockey they all belong to the large class of gentlemen; at least, I was not able to discern any difference between them. But this sort of monotony does not entertain. In this regard it is different among us. At home it is seen what each one is or what he professes to be. Every characteristic is sharply defined. There is the student, the soldier, the clergyman from the country, the merchant, the baron-crowded in a little space one believes to see the whole world before him. Of course we owe this entertaining mixture chiefly to our differences in rank and station, to our prejudices and to our arrangement of state. But who thinks of all this in the moments of joyful intoxication, who concerns himself with sad reflections during these fleeting moments of joy! It is enough that one is entertained and charmed; the question as to what produces this delight does not concern us in the moments of bliss. One thing that gives an amusing touch to the gatherings of the Americans, whether these gatherings be secular or religious in character, is the fact that everybody arrives on horseback. Women and children everybody is on horseback. In the country frequently two, sometimes even three persons, are seen riding one horse. Such a gathering has much in common with a camp of Cossacks, and the lover of horses certainly finds plenty material for entertainment. The Americans, like the English, are much given to betting, and at the horse races hardly anybody is a mere spectator. In the state of Missouri there are apparently no strict laws against gambling, especially against games of hazard, as in most of the other states, or these laws are waived on special occasions, for one roulette wheel stood beside another at these races. The number of persons who took part in the gambling is incomprehensible. Without dismounting from their horses many made a wager with the nearest by-stander and without apparently enjoying the exhilaration of the suspense rode on again when the result was made known.

On the morning of the fifteenth of October we started on our excursion into the valley of the Missouri. We took a westerly direction, slightly toward the north. We had made up our minds to follow the highway toward Jefferson City, the seat of government of the state of Missouri, and to deflect from this road only for the purpose of seeking out the settlements of the educated Germans. Close to St. Louis the country is not especially attractive, but further on it becomes more so. Two German writers, one of whom is Friedrich Schmidt, have written contradictory reports as to the region immediately around St. Louis. The one asserts that it is prairie land while the other claims that it is woodland. Both are right. It is manifest that once everything was prairie. Everybody in the west knows how quickly a prairie is transformed into forest land if it is no longer set on fire in the autumns. Illinois, which is chiefly a prairie state, is constantly in the process of changing into the most attractive forest land. If Mr. Schmidt was here twenty-five years ago, he doubtless saw but little forest land. Even now there are still miles of prairie. The weather was delightful for our journey. The sky and the air reminded us of spring. The prairies are said to be enchantingly beautiful in spring. Even now they are still marvelous. Here and there the young hickory trees glowed in the most livid gold, numerous varieties of sumach glowed in fiery red and caused the wide prairie to appear like a huge carpet wrought in purple. Countless clusters of flowers of bright colors modified by the thousandfold autumnal shading of their leaves adorned the plains. After a few hours of rest with a cultured German family which lives about ten miles from St. Louis, we went about an equal distance further and spent the night with an American, who a few years ago immigrated from Virginia. Inns are found only in the cities and towns, or possibly along the mail-routes. The traveler is therefore obliged to make use of the hospitality of the settlers. This sort of hospitality is perhaps nowhere developed to a higher degree than in this new country where it would indeed be unnatural and inhuman if a stranger were not hospitably and cordially received. For our purpose of becoming acquainted with the land and its people we had chosen the right mode of traveling, for it compelled us to stop several times each day in the huts of the inhabitants. Necessarily we had to enter into conversation, and no theme was nearer at hand for discussion than the nature of the country, the advantages and disadvantages of the settlement, the kind of produce raised, and the means of disposing of it.

By constantly losing our road we went much farther than we ought to have gone, but occasionally we struck upon a shorter way without knowing it. Below the river Au Vasse, which we had to cross in a canoe, the country is for the most part prairie land, except that part which is nearest the river. The cold became painful, and the icy wind which blew across this vast plain, where no elevation offered it resistance, seemed to us to come from the Rocky Mountains, many thousand miles to the northwest. We found no German settlements in this region, but were told that shortly before this time a deputy had bought land for some Germans in Bran (?) County, [perhaps Boone County], above Jefferson City. Before we reached the little town of Pinkney our way led us through Louther Island in Montgomery County. This island has been formed by a creek, which, having divided into two parts, flows in two channels into the Missouri. The island is exceptionally fertile. There are large and beautifully equipped settlements here which have much in common with the plantations of the southern states. Many of the houses of the homesteads are used exclusively as the dwellings of the black slaves. Here the farmers raise tobacco and cotton. Tobacco is said to do exceptionally well in Missouri and to be preferred to all other tobaccos on the market in New Orleans. The practice of cultivating this crop, however, might easily bring the condition of the slaves near to that condition which their unfortunate fellows suffer in the southern states. Up to this time the treatment of the slaves, who are in the country districts, is very good. Their material condition is very endurable. As a rule they live in families, have their own dwelling houses, their own live stock and till a certain amount of land for themselves, in which way they have their own earnings. This tolerable condition of the Missouri slaves by no means excuses the shameful practice of slavery, however, and against this sin committed against humanity one must strive with all energy. The Germans who live in Missouri have no slaves as yet, and are still opposed to the institution of slavery. However, it is possible that in time this feeling may become dulled, and their posterity may grow up with the idea that it is a necessary institution. No German ought to live in a slave state. Illinois, a free state, has a great advantage over its neighboring states. The breech between the free states and the slave states is inevitable, and who should then like to be found on the wrong side? Near Louther Island we met with a slight adventure. In the darkness of the night we had lost our way, and finally came to a broad creek. The icy coldness of the water rather than its depth repelled us from wading it. Finally our calling and shooting was answered by the barking of dogs in the distance. We went in the direction from which the barking came and were so fortunate as to find a sort of a bridge which had been made of felled logs. which brought us to a very new little settlement. The cold became more intense day by day, so that our hands became very cold on the rifle barrels. With every degree that the mercury fell our faith in Duden's pleasant winters in these western states vanished more and more. [A footnote states that the winters of the previous years were very severe.] To be sure there are many days which make us feel that we are ten and more degrees further south than we were in our old home, but there is no such thing in Missouri as a winter which approaches the rainy season of the tropics. There will be no change in the climate of the state until clearings and tilling of the soil have done their work.

Pinkney, a little town of a few houses, is prettily located. Here many Germans have settled and some of them have chosen very romantic locations. The Americans reproach the Germans for selecting the very poorest land at times, and this is on the whole true. The Germans prefer high lying regions because they are more healthful, open and attractive. This the Americans do not comprehend. They call only that land pretty which is rich in fertility. They never become attached to a given region. If they can sell their property to any sort of advantage, they are certain to do so, regardless of the fact that it may be the scene of their happy childhood

with its dearest memories. This characteristic of the Americans is not beautiful, but for the rapid settling of a new state it is very advantageous. It is also beneficial to the political condition of the Republic that the American is less susceptible to moral and ethical impressions. The more self-satisfied a people is the more easily it is governed, provided the right cords are touched. The so-called man of feeling is the

toy of every ambitious person.

Ten miles below Pinkney is the new town of Marthasville in the newly created County of Warren which was formerly a part of Montgomery County. Here the German settlements are numerous. The settlers seem to think that their fortune is made if they are close to Duden's old home. All the Germans whom we met in Missouri belong to the educated classes, and in spite of the short time they have lived here many of them are already handsomely arranged in their homes. Most of them have forgotten the disappointment which at first gave them so many sad hours, and they fare better here than they did in their oppressed home country. Duden's place itself is not as poorly situated as some people say. But the wanderer seeks in vain for something that might with due apology be called a dwelling house. Neither are there any arbors and beautiful vistas to be observed. However, it must be remembered that the settlement has been lying idle for several years and on this account it makes an unattractive and unpleasant impression.

A beautiful road led us from Lake Creek to Missouritown, a very small, dead village, which, however, boasts of a very beautiful situation on the river. There are many German settlements along Lake Creek.—Limestone constitutes the greater part of all bluffs along the Missouri. Sandstone occurs more rarely. Granite is not found at all between the Alleghany and the Rocky Mountains. Our plan to return by way of St. Charles was frustrated when we again lost our road. It would have taken us too long to have found the right road again, so we returned to the right side of the Missouri at Lewis' Ferry. For a while we followed the river valley, crossing Bon Homme creek and Creve Cœur creek and on

the twenty-second of November we again reached St. Louis, our starting place, after three weeks of wandering."

Translated by William Godfrey Bek, University of North Dakota.

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## INDIAN MODE OF LIFE IN MISSOURI AND KANSAS.

Fort Osage was located near present site of the town of Sibley, Mo. This post was established for military purposes as well as a permanent trading post and Sibley was in charge of it. Previous to this time trappers did not care to have the geography of their rich hunting grounds known and they were more interested in keeping this vast territory the "unknown". Perhaps they fostered the belief that a journey into it was full of peril. It is true that explorers in this new country had to endure enormous toil, perpetual care to avoid marauding bands of Indians, swollen streams to be crossed, no roads and few trails. After the reports of Lewis and Clark's expedition and Zebulon Pike's return, attention was called to a country of possibilities known to only a few venturesome traders and voyageurs. Soon posts began to spring into existence, and every stream of any consequence had its local trader. To bring trade into legitimate and safe lines the government established Fort Osage. The trade at this fort was drawn from the tribes along the Missouri and Kansas Rivers, and from the Osage tribes to the south and southwest. Sibley had spent several years among these people and understood them thoroughly.

Today this country is settled by an industrious and energetic people, full of resources, living their lives in plenty without much thought of the struggles of the aborigine or even of their forbears that took the place from this original people. We may glimpse back a hundred years and see the vast changes that have occurred in this comparatively short period of time. I believe the letter which here follows pre-

sents the best view of the mode of life of the aborigines inhabiting this country that I have ever seen. It is taken from Moore's Report on Indian Affairs, page 203, Appendix.

DAVID W. EATON, Versailles, Mo. d

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Letter from Geo. C. Sibley, Esq., Factor at Fort Osage, to Thomas L. McKenney, Esq., in which he gives a good description of the mode of life of the Indians then living in Missouri and Kansas.

"Fort Osage, 1st., Oct., 1820.

Sir: Your letter of the 9th. Aug. was received three days ago, I hasten to reply to the queries therein contained.

The tribes of Indians, who usually hold intercourse with this trading house, are

1st. The Kansas, residing about three hundred miles up the Kansas river, in one village. They hunt all through the exterior country watered by the Kansas River, and on the Missouri, south side, above this place to the Nodaway. I rate this tribe at somewhere about eight hundred souls, of whom about two hundred and thirty are warriors and hunters, thirty or forty superannuated old men, and the rest women and children.

2nd., The Great Osages, of the Osage River.

They live in one village on the Osage River, seventyeight miles (measured) due south from Fort Osage. They hunt over a very great extent of country, comprising the Osage, Gasconade and Neeozho rivers and their numerous branches. They also hunt on the heads of the St. Francis and White Rivers, and on the Arkansaw. I rate them at about one thousand two hundred souls, three hundred and fifty of whom are warriors and hunters, fifty or sixty superannuated and the rest women and children.

3d., The Great Osages of Neeozho, on about one hundred and thirty or forty miles southwest of Fort Osage; one village on the Neeozho River. They hunt pretty much in common with the tribe of the Osage river, from which they separated

six or eight years ago. This village contains about four hundred souls, of whom about one hundred are warriors and hunters, some ten or fifteen aged persons, and the rest women and children.

4th. The Little Osages.

Their villages on the Neeozho River, from one hundred and twenty to one hundred and forty miles south of this place. This tribe, comprising all three villages, and comprehending about twenty families of Missouris that are intermarried with them, I rate at about one thousand souls, about three hundred of them are hunters and warriors, twenty or thirty superannuated, and the rest are women and children. They hunt pretty much in common with the other tribes of Osages mentioned, and frequently on the head waters of the Kansas, some of the branches of which interlock with those of the Neeozho.

5th. The Ioways, only visit this place occasionally. This tribe is about as numerous as the Kansas. They are latterly much divided, so that I am unable to state precisely how many villages they occupy, or where they are located. About half the tribe, I understand, joined the Ottoes, near the Council Bluffs, last year, with the intention of remaining there. I am not sure whether they still remain there or not. The other part of the tribe remains in two villages, I believe, on the Des Moines and Grand Rivers. The Ioways hunt principally between the Missouri, north of it, and Mississippi rivers, from the heads of the two Charatons, up to the Nodaway, and sometimes still farther up.

6th. Of the Chaneers, or Arkansaw tribe of Osages, I need say nothing, because they do not resort here to trade. I have always rated that tribe at about an equal half of all Osages. They hunt chiefly in the Arkansaw and White Rivers and

their waters.

It must be understood, that the above is merely an estimate of numbers founded on the general knowledge I have of the several tribes mentioned, and without any pretension to accuracy, though I do not believe I am far from the truth: if any thing I am over the mark. As relates to the Osages; it is next to impossible to enumerate them correctly. I have made several attempts in vain. They are continually removing from one village to another quarrelling or intermarrying, so that the strength of no particular village can even be correctly ascertained. I do not believe that any of the tribes, named above, increased in numbers, take them in the aggregate, and I think they are rather diminishing. They are always at war and not a year passes when they do not lose some in that way. Epidemic diseases attack them now and then, and sweep them off by families.

I proceed to answer your 4th. query. The main dependence of each and every of the tribes I have mentioned, for clothing and subsistence, is hunting. They would all class alike in respect of their pursuits; therefore, one general remark will suffice for all.

They raise annually small crops of corn, beans, and pumpkins, these they cultivate entirely with the hoe, in the simplest manner. Their crops are usually planted in April, and receive one dressing before they leave their villages for the summer hunt, in May. About the first week in Aug. they return to their village to gather their crops, which have been left unhoed and unfenced all the season. Each family, if lucky, can save ten to twenty bags of corn and beans, of a bushel and a half each; besides a quantity of dried pumpkins. On this they feast, with the dried meat saved in the summer, till September, when what remains is cached, and they set out on the fall hunt, from which they return about Christmas. From that time, till some time in February or March, as the season happens to be mild or severe, they stay pretty much in their villages, making only short hunt excursions occasionally, and during that time they consume the greater part of their caches. In February or March, the spring hunt commences; first the bear, and then the beaver hunt. This they pursue till springtime, when they again return to their village, pitch their crops, and in May set out for the summer hunt, taking with them their residue, if any, of their corn, Etc. This is the circle of an Osage life, here and there ines; ve

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dented with war and trading expeditions; and thus it has been, with very little variation, these twelve years past. The game is very sensibly diminishing in the country, which these tribes inhabit; but it has not yet become scarce. Its gradual diminution seems to have had no other effect on the Indians than to make them more expert and industrious hunters, and better warriors. They also acquire more skill in traffic, become more and more prone to practice fraud and deception in their commerce; are more and more dependent upon the traders, and consequently more and more debased and degraded.

I ought to have stated that these people derive a portion of their subsistence regularly from the wild fruits their country abounds with. Walnuts, hazelnuts, pecans, acorns, grapes, plums, papaws, persimmons, hog potatoes and several other very nutritious roots; all of these they gather and preserve with care, and possess the art of preparing many of them, so that they are really good eating. I have feasted daintily on the preparation of acorns (from the small white oak,) and Buffalo grease. I had the advantage, however, of a good appetite, well whetted by nearly two days abstinence from food. The acorns and fat agree with me, however, and convinced me that a man may very well subsist upon it, if he can get nothing better. This dish is considered as last resort, next to a corn alone. From these facts you will not be surprised to learn, that the arts of civilization have made but little progress, as yet among the Indians of this quarter, knowing as you do, the natural propensity of the Indians to live without toil, upon the bounties of wild nature, rather than to submit to what he considers the degradation of labor, in order to procure subsistence. So long as the facilities, I have enumerated, exist, so long will exist the propensity to rely chiefly on them. This is nature. Art assumes the reins when nature gives them up, and we cling to nature as long as we can. So long as her exhuberant bosom affords us sustenance, there we tenderly repose, free and untrammelled. On the failure of that resource we are obliged to resort to art for support. The whole history of man shows that art never gets the ascendancy of nature, without a desperate struggle, in which the object of contention is most piteously mangled, and often destroyed, and a compromise is always obliged to be effected; which compromise, if I understand the subject, is the very thing we call civilization, in reference to the Indian nations; an object we are all aiming at, and what I feel as anxious as any one to effect.

I have often noticed Indians observing, with much apparent interest the effects of our agricultural skill, our fine gardens, and crops, and our numerous comforts and conveniences. A very sensible Osage, The Big Soldier, who had twice been at Washington, once said to me, when I was urging the subject of civilization to him, "I see and admire your manner of living, your good warm houses, your extensive fields of corn, your gardens, your cows, oxen, workhorses, wagons, and a thousand machines, that I know not the use of. I see that you are able to clothe yourself, even from weeds and grass. In short you can do almost what you choose. You whites possess the power of subduing almost every animal to your use. You are surrounded by slaves. Everything about you is in chains, and you are slaves yourselves. I hear I should exchange my presents for yours, I too should become a slave. Talk to my sons, perhaps they may be persuaded to adopt your fashions, or at least to recommend them to their sons; but for myself, I was born free, was raised free, and wish to die free." It was in vain to combat this good mans opinions with argument. "I am perfectly content", he added, "with my condition. The forests and rivers supply all the calls of nature in plenty, and there is no lack of white people to purchase the surplus products of our industry". This is the language that is held by the Indians in this quarter generally. Like all people in state of ignorance, they are bigoted, and obstinately adhere to their old customs and habits. Tis in vain to attempt to bend the aged oak to our purposes. The tender sapling, however, can be made to yield to our effort, and bend to our will. The missionary establishment now forming near Osage, I have no doubt will tend very much to promote the civilization of these tribes, so far at least as regards the rising generation. Few, if any, of these now above the age of fifteen, will ever wholly abandon their present savage pursuits.

It is a singular fact, however, that although the Indians who have attained the age of twenty five years and upwards, generally refuse instruction, yet they seem by no means

averse to have their children taught our arts.

I will conclude this communication with the following proposition, which you may make use of as you think proper. It is for the government, by compact with the Indians, to cause to be surveyed certain districts of the Indian lands suitable for the purpose, in the same manner that the United States lands are surveyed, only that I would recommend that the lines should be more distinctly marked. Whenever an Indian evinced a serious disposition to settle himself permanently, and to pursue civilized habits, a portion of this land, from 160 to 640 acres, as might be proper, should be allotted to him and family forever. He should not have the right to sell, or alienate it in any manner, except by the express permission of the President of the United States, nor should it be held for debts. I believe that by locating each Indian family, disposed to adopt our mode of living, on a tract of land, of their own distinctly marked out, and permanently secured to them, government would greatly promote the scheme of civilization. You would thus give then, at once, a distinct and permanent property, and interest in the soil, instead of a vague, transient, undivided property in a vast extent of country, from which the art of a few of his leaders may expel him forever at any time. Each individual may thus be secured in his own right. He may have a house where he and his family may live securely on the fruits of their own industry. Each may sit down in despair, they have no longer a home or a country. Yet have we pursued them, and importuned them to become farmers, after their spirits are broken and after they have unwillingly deprived themselves of the power of possessing what a farmer values most, an independent home.

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I forbear any further remarks on this subject for the present. A little reflection, will, I am sure, satisfy you that it is worthy of consideration.

(signed) GEO. SIBLEY.

#### THE ORIGIN OF "O. K."

(From the Evening Post.)

Jeffersonville, Ind.—People constantly write the letters O. K. on bills or other statements to signify that they are all right. How did this practice originate?

Answer—The practice got its start in the days of Gen. Jackson, known to the men of his time as Old Hickory.

It is said that Gen. Jackson was not as proficient in spelling as he was in some other things, and so in the abbreviating which he practiced he made O. K. stand for all correct—"oll korrect."

This is as near as our data at present enables us to come to the origin of the now wide practice.

Editor Evening Post:

I note what you say about the origin of the practice of using the letters "O. K." to signify "Correct" or "All right." It seems to me that your informant is wrong. I am quite sure that this practice originated during the Clay and Polk campaign. At that time the writer was a boy, living in Boonville, Mo. You all know what a lively campaign the Clay and Polk campaign was. Mr. Clay was the idol of the Whigs, and was affectionately called "Old Kentucky." Those who favored his election put up their flags on ash poles, at all the crossroads, country taverns and wood yards on the river, while the Democrats put up hickory poles with poke bushes at the top, the Whigs using for a flag a square of whole cloth with the letters "O. K." signifying "Old Kentucky." The Democrats used a streamer with "Polk and Dallas, Oregon and Texas."

The town of Boonville boasted two newspapers, one the Observer, a Whig paper, conducted by one Caldwell, a very

brilliant young man, the other the Boonville Register, conducted by one Ira Van Nortrick. Toward the close of the campaign the editor of the Register came out in a very salty editorial, denouncing the ignorance of the Whigs and demanding to know "What does 'O. K.' mean anyhow?" Caldwell came back at him with the information that he would find out that "O. K." meant "Oll Korrect" in November. The expression took like wildfire; the boys yelled it, chalked it on the fences. Like other slang, it seemed to fill a want, and upon the inauguration of the telegraph, in '46, the adoption of "O. K.," I was informed by one of the first operators in the country, Mr. E. F. Barnes, introduced it to the business public, as he was one of the parties organizing the system of signals used by the company. Then it passed into general use. Of course Missouri was not the only place where Mr. Clay was called "Old Kentucky." A favorite song of the Whigs, both in Missouri and Kentucky, only a line or two of which I can now call to mind, sung to the tune of "Old Dan Tucker," ran about thus:

"The balky hoss they call John Tyler, We'll head him soon, or bust a biler!"

Chorus:

"So get out of the way, you're all unlucky. Clear the track for 'Old Kentucky!'

J. W. B.

#### BOOK NOTICES.

Eleven Roads to Success charted by St. Louisans who have traveled them. By Walter B. Stevens, St. Louis, 1914.

The above work was published "to the memory of Joseph Pulitzer who rose by tireless industry and high ideals from a St. Louis reporter to a foremost place in the journalism of the world." It consists of a series of talks with notably successful St. Louisans, showing how they started and to what they owed advancement in life, and these talks were suggested by Mr. Pulitzer to the author. The talks were had

with E. C. Simmons, Samuel Cupples, James Campbell, Adolphus Busch, Festus J. Wade, Elias Michael, Chas. P. Johnson, John Scullin, W. K. Bixby, D. R. Francis and J. J. Glennon. Our readers know the roads these eleven men traveled, and the success each one made in the road selected by him.

The Methodist Episcopal Church and the Civil War. By William Warren Sweet, Ph. D., Assistant Professor of History, Ohio Wesleyan University. Methodist Book Concern Press, n. d.

The above was a Doctor's Thesis at the University of Pennsylvania, and its object was to show the importance of the churches as an aid to the government during the civil war. The material used had been practically untouched by the regular historian, and the sources of it had been such as the church periodicals, minutes of the General and Annual Conferences, church records, minutes of preachers' meetings, histories of individual churches, and biographies of prominent church officials.

The first two bishops of the Methodist Episcopal Church, Coke and Asbury, were the earliest ecclesiastical officials to tender to the president of the United States the unanimous support of their church immediately upon its organization, and that church has ever since given the State its hearty support.

Of many things treated by the author there were controversies, but in all the author has especially tried to be impartial, and to record the true facts. His work will be found of great value.

Out of the Shadow. How a Missouri banker conquered tuberculosis out in Colorado. By J. L. Woodbridge, a victim. 1914. Fowler, Colo. 30 p.

The above author was a member of the Historical Society and a contributor to the first volume of the Review. His account of getting out of the shadow that was constantly becoming darker is a valuable one.

The Spanish Domination of Upper Louisiana. By Walter B. Douglas. Reprint from Proceedings of the State Historical Society of Wisconsin, Madison, 1914.

This paper of 17 pages by Judge Douglas is a historical account of the country from 1762 to 1803, while under Span-

ish rule.

The Waters of Lethe. By Lida L. Coghlan. With illustrations by Clara M. Coghlan. Baltimore and New York. John Murphy Company (C. 1904).

The above is an interesting novel by a Missouri authoress of Maplewood, Missouri, and for which we are indebted to

her.

The Wood-Using Industries of Missouri. By Charles F. Hatch and Hu Maxwell, U. S. Forest Service. Reprint from St. Louis Lumberman, March 15, 1912.

Manufacturers reported to the authors fifty-six species of Missouri woods used by them, and this reprint is full of interesting information concerning them, their uses and their manufacture.

In this number of the Review is an account of the origin of "O. K.," differing from the commonly accepted one. It is given by J. W. Baird, of Louisville, Kentucky, a descendant now past eighty-two years old, of James Baird, who was the first to engage in the Santa Fe trade, an account of which we will give later.

#### NECROLOGY.

Hon. Samuel Byrns was a member of the Missouri State Senate in the Thirtieth General Assembly, 1879, and also in the Thirty-first; and was a member of Congress in the Fifty-second Congress. He and Martin L. Clardy were intimate friends, having served together in the Confederate army, and a few minutes after being informed of Mr. Clardy's death he suffered a stroke of paralysis, and died at Fulton, Missouri, July 9, at the age of sixty-eight years.

Mrs. Louise Norwood Fitch, daughter of Dr. J. G. Norwood, formerly of the University of Missouri, and of the Missouri Geological Survey, for the last fifteen years Matron of the University, died at her home in Columbia June 21, 1914.

James Mickleborough Greenwood, a member and valued friend of this Society, died suddenly as he sat in his office chair in the public library building in Kansas City, August 1, 1914, after a life of active and leading work in the field of education and educational methods, since 1874 as Superintendent of the public schools of Kansas City. He was born November 15, 1837, in Sangamon county, Illinois, and came to Adair county, Missouri, in 1852, where at the age of sixteen years he began his life work of teacher, and at the time he was made Superintendent of the Kansas City schools he was a member of the faculty of the Kirksville Normal School. May 15, 1913, he retired from the superintendency of the Kansas City schools, and was made adviser to the board of education of the city. Since that date he was also engaged in writing a history of Missouri, which was just completed. He had been president of the Missouri State Teachers' Association, a member of the National Educational Association from its formation, and had been its treasurer and president.

Professor Charles M. Harvey, one of the Trustees of this Society, and for many years associate editor of the Globe-Democrat, died in St. Louis August 17th. He was born in

Boston sixty-six years ago, and came to St. Louis soon after completing his education. Because of his knowledge of historical and scientific subjects he was referred to as "the walking encyclopedia," and after his retirement from active editorial work was often consulted by other writers. For the past year and a half since his retirement from active editorial work, he has written for magazines, and had applications for work beyond his ability to perform.

The second volume of the Review had a valuable paper by Prof. Harvey on "Missouri from 1849 to 1861."

Judge Elijah H. Norton was born in Logan County, Kentucky, November 21, 1821, and educated at Cantrall College and Transylvania University. He came to Missouri in 1842, and was elected a Circuit Judge before the war, and in 1861 was elected as a Whig to the Thirty-seventh Congress. He was a member of the Constitutional Convention of 1875, and in 1876 was appointed to the Supreme Court. In 1878 he was elected Judge of the Supreme Court for a term of ten years, and since the end of his term has lived in retirement. He died at Platte City, August 6, 1914.

Rev. Jesse B. Young died in Chicago, July 30, aged seventy years. He graduated from Dickinson College in 1868, was a Captain in the Eighty-fourth Pennsylvania Volunteers, was in the ministry of the Methodist Episcopal Church at Kansas City and other cities, and for eight years was editor of the Central Christian Advocate at St. Louis. His latest volume as an author was on the battle of Gettysburg.

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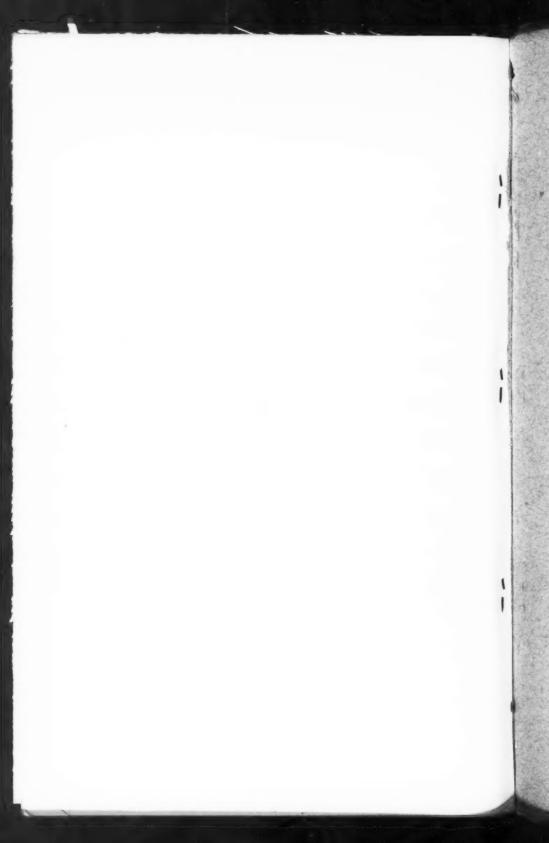
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